

**Ernie's Concrete Construction, Inc. and Michigan Laborers' Fringe Benefit Funds. Case 7-CA-33598**

December 11, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union August 14, 1992, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing against Ernie's Concrete Construction, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint,<sup>1</sup> the Respondent has failed to file an answer.

On November 13, 1992, the General Counsel filed a Motion for Default Judgment. On November 16, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Default Judgment disclose that the Regional attorney, by letter dated October 15, 1992, notified the Respondent that unless an answer was received by October 29, 1992, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, with an office and place of business in Detroit, Michigan, has been en-

<sup>1</sup> Copies of the charge and complaint that were sent to the Respondent by certified mail were returned to the Regional Office marked "unclaimed." However, the Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

gaged in the construction industry as a concrete contractor. During the calendar year ending December 31, 1991, the Respondent provided services valued in excess of \$50,000 to Turner Construction Company, an enterprise within the State of Michigan. During the same time period, Turner Construction Company sold goods and/or performed services valued in excess of \$50,000 directly to customers located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the State of Michigan Laborers' District Council (the District Council) and Local 959 of the Laborers' International Union of North America, AFL-CIO (the Union) are labor organizations within the meaning of Section 2(5) of the Act.

The Washtenaw Contractors Association, Inc. (WCA) is an organization composed of employers engaged in the construction industry and exists, in whole or in part, for the purpose of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the District Council and the Union.

**II. ALLEGED UNFAIR LABOR PRACTICES**

On or about August 1, 1990, the WCA and the District Council and the Union entered into a collective-bargaining agreement (Association agreement), which by its terms was effective from August 1, 1990, through July 31, 1992. On October 22, 1990, the Respondent executed a nonmember agreement with the Union (Local agreement), agreeing to abide by all terms of the Association agreement. The signing of the Local agreement by the Respondent bound the Respondent to the terms and conditions of employment of the Association agreement, pursuant to Section 8(f) of the Act. At all times since at least October 22, 1990, District Council, and Local 959 has been the exclusive collective-bargaining representative pursuant to Section 8(f) of the Act of the employees in the following unit which is appropriate for purposes of collective bargaining within the meaning of Section 9(b):

All full-time and regular part-time laborers employed by the Respondent, but excluding guards and supervisors as defined in the Act.

At all times material, the Michigan Laborers' Fringe Benefit Funds (MLFBF) has, pursuant to the Local agreement, been designated to collect fringe benefit contributions and to administer the fringe benefit funds of that agreement. The Association agreement provides, inter alia, for certain fringe benefit contributions to be made to MLFBF by the Respondent on behalf of the employees in the unit.

By letter dated July 28, 1992, the MLFBF, by its agents, on behalf of the Union, requested the Respondent to make available for review its payroll records, in-

cluding employee earning records, IRS Forms W-2, W-3, 1099, and 941 and contribution records for all trades, for the period October 1990 to date so that MLFBB could audit the Respondent's compliance with the fringe benefit contributions provisions of the Association agreement and the agreement. The information requested is necessary for and relevant to the Union's performance of its function as the collective-bargaining representative of the unit employees. Since on or about July 28, 1992, and continuing to date, the Respondent has failed and refused to furnish MLFBB with the information.

#### CONCLUSION OF LAW

By failing and refusing to bargain with the Union by failing to provide information to the MLFBB, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to furnish the Union with the information requested.

#### ORDER

The National Labor Relations Board orders that the Respondent, Ernie's Concrete Construction, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain collectively with the State of Michigan Laborers' District Council and Local 959 of the Laborers' International Union of North America, AFL-CIO by failing to provide requested information to the Michigan Laborers' Fringe Benefit Funds.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union by furnishing to the Michigan Laborers' Fringe Benefit Funds, on behalf of the Union, payroll records, including employee earning records, IRS Forms W-2, W-3, 1099, and 941 and contribution reports of all trades, for the period of October 1990 to July 31, 1992 the expiration date of the association agreement, which records are relevant and necessary to the Union's role as the collective-bargaining representative of the unit employees.

(b) Post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with the State of Michigan Laborers' District Council and Local 959 of the Laborers' International Union of North America, AFL-CIO, by refusing to provide information to the Michigan Laborers' Fringe Benefit Funds, on the Union's behalf, that is necessary for, and relevant to, the Union's performance of its function as the exclusive representative of our employees in the following appropriate unit:

All full-time and regular part-time laborers employed by the Respondent, but excluding guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union by furnishing to the Michigan Laborers' Fringe Benefit Funds payroll records, including employee earning records, IRS Forms W-2, W-3, 1099, and 941 and contribution reports of all trades, for the period of October 1990 to the expiration of the collective-bargaining agreement, which records are relevant and necessary to the Union's role as the collective-bargaining representative of the unit employees.

ERNIE'S CONCRETE CONSTRUCTION,  
INC.